

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Abacus Television)	File Number EB-07-PA-386
)	
Licensee of UHF Translator Station WIIC-LP)	NAL/Acct. No. 200932400001
Pittsburgh, Pennsylvania)	
Facility ID # 68411)	FRN: 0010-72-4557

FORFEITURE ORDER

Adopted: February 18, 2010

Released: February 22, 2010

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to Abacus Television (“Abacus”), licensee of UHF translator station WIIC-LP in Pittsburgh, Pennsylvania, for willfully and repeatedly violating Section 1.903(a) of the Commission's Rules (“Rules”)¹ by failing to operate the station consistent with the terms of the station authorization.

II. BACKGROUND

2. The authorization for UHF Translator station WIIC-LP requires that the station operate on Television Channel 29. On December 6, 2007, agents determined that the station was operating on Television Channel 32. Subsequent to the inspection, Abacus provided the Philadelphia Office with an invoice showing that station WIIC-LP had been operating on Channel 32 since April 7, 2007.

3. On October 15, 2008, the Commission’s Philadelphia Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Abacus in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 1.903(a) of the Rules.² In its response, Abacus does not dispute any of the findings in the NAL, but requests a cancellation or reduction based on its inability to pay and its history of compliance with the Commission’s Rules.

¹ 47 C.F.R. § 1.903(a). Although many of the rules that apply to low power TV stations are found in Part 74 (47 C.F.R. §§ 74.701-74.796), Section 1.901 provides that the purpose of the Part 1 rules “is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of this chapter.” 47 C.F.R. § 1.901.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932400001 (Enf. Bur., Philadelphia Office, released October 15, 2008).

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

5. Abacus does not dispute the findings in the *NAL*, but asks that the forfeiture amount be cancelled or substantially reduced because of its inability to pay. To support this claim, Abacus supplied profit and loss statements for Abacus for the three years prior to the issuance of the *NAL*. When considering an inability to pay claim, the Commission has determined that, in general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.⁷ If gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture.⁸ The Commission has also concluded that it is appropriate to take into account “income derived from other affiliated operations. . . .”⁹ Because Abacus is operated as a sole proprietorship, it is appropriate to look at the gross income of its sole proprietor, Benjamin Perez.¹⁰ Despite repeated efforts by Commission staff to obtain documentation of Mr. Perez’s gross income, Mr. Perez has failed to submit such documentation. We therefore are unable to assess Mr. Perez’s inability to pay claim.

6. We have examined Abacus’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. Because Abacus does not dispute any of the findings in the *NAL*, we find that Abacus willfully and repeatedly violated Section 1.903(a) of the Rules by failing to operate WIIC-LP consistent with the terms of the station’s authorization. Mr. Perez has failed to submit documentation regarding his gross revenues in order for us to assess his request for a reduction based on an inability to pay and therefore such request is denied. We do find, however, that a reduction is warranted based on Abacus’s history of compliance with the Commission’s Rules and we reduce the

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

⁸ *Id.*

⁹ *KASA Radio Hogar, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 6256, 6258 (2002) (quoting *Emery Telephone*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859-60 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999)).

¹⁰ *Playa del Sol Broadcasters*, Memorandum Opinion and Order, 22 FCC Rcd 1073 (2007) (finding that the gross income of the sole proprietor, when compared to the forfeiture amount, effectively negated the financial hardship claim).

forfeiture amount on that basis to \$3,200.

IV. ORDERING CLAUSES

Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules¹¹ that Abacus Television **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for willful and repeated violation of 47 C.F.R. § 1.903(a).

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Abacus Television shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Abacus Television’s address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt.
Regional Director, Northeast Region
Enforcement Bureau

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f).

¹² 47 U.S.C. § 504(a).